

## **GUANTANAMO DETAINEES**

The United States and its coalition partners remain at war against al Qaida and its affiliates, both in Afghanistan and in operations around the world.

Since Usama bin Laden declared war on the U.S. in 1996, al Qaida and its affiliates have launched repeated attacks that killed and wounded thousands of Americans, including 9/11, the U.S. embassy bombings in Africa, the attack on the U.S.S. Cole and others. Hundreds of innocent civilians from dozens of other countries have been killed as well.

Seventeen U.S. soldiers have been killed in combat with Taliban/al Qaida forces in Afghanistan since August 2003.

The law of armed conflict governs this war between the U.S. and al Qaida and establishes the rules for detention of enemy combatants. These rules permit the U.S. to detain enemy combatants without charges or trial for the duration of hostilities. Detention prevents combatants from continuing to fight against us.

We have no interest in holding people who are not enemy combatants. To do so would be inconsistent with the deeply held values in which the American people believe and to which we as a nation have long been committed.

An elaborate process is in place to identify enemy combatants to be held at Guantanamo, assess the threat they pose to the U.S. and the international community, and regularly review all available information to make sure that their continued detention is necessary.

Detainees have been released when it is believed they no longer pose a significant threat, and they have been transferred to the custody of their governments when those governments are prepared to assume responsibility for ensuring that the detainees will not pose a threat to the United States.

### **DETAINEES AT GUANTANAMO**

Guantanamo detainees include many rank-and-file jihadists who took up arms against the U.S., as well as senior al Qaida operatives and leaders, and Taliban leaders. The type of enemy combatants captured during the course of hostilities include:

- Terrorists linked to major al Qaida attacks, including the East Africa U.S. embassy bombings and the USS Cole attack.
- Terrorists who taught or received training on arms and explosives, surveillance, and interrogation resistance techniques at al Qaida camps in Afghanistan and elsewhere.
- Terrorists who continue to express their commitment to kill Americans and conduct suicide attacks if released.
- Terrorists who have sworn personal allegiance to Usama bin Laden.

- Terrorists linked to several al Qaida operational plans, including possible targeting of facilities in the United States.
- Members of al Qaida's international terrorism support network, including financiers, couriers, recruiters, and operatives.
- Terrorists who participated in attempted hijacking incidents.

Representative examples of specific Guantanamo detainees include:

- An admitted al Qaida explosives trainer who has provided information on the September 2001 assassination of Northern Alliance leader Masood and on the al Qaida organization's use of mines.
- An individual who completed advanced terrorist training at camps in Afghanistan and participated in an attempted hijacking/escape while in custody that resulted in the deaths of Pakistani guards.
- An individual involved in terrorist financing who provided information on Usama bin Laden's front companies, accounts, and international money movements for financing terror.
- A Taliban fighter who spent three months fighting on the front lines in Afghanistan and is linked to al Qaida operatives connected to the East Africa embassy bombings.
- An individual with links to a financier of the September 11th plots who attempted to enter the United States through Orlando Florida in August 2001. Phone records suggest September 11<sup>th</sup> hijacker Mohammed Atta was also at the Orlando airport that day. This individual was later captured in Pakistan after fleeing Tora Bora.
- Two individuals associated with senior al Qaida members who were working on remotely detonated explosive devices for use against U.S. forces.
- A member of an al Qaida supported terrorist cell in Afghanistan that targeted civilians, especially journalists and foreign aid workers; responsible for a grenade attack on a foreign journalist's automobile.
- An admitted al Qaida member who was plotting to attack oil tankers in the Persian Gulf using explosives laden fishing boats.
- An individual who fought with an al Qaida supported terror cell in Afghanistan, personally establishing reconnaissance and ambush positions around Kandahar Airbase.
- An individual who served as a bodyguard for Usama Bin Laden and escorted him to Tora Bora, Afghanistan following the fall of Jalalabad, Afghanistan.
- An admitted al Qaida member who served as an explosives trainer for al Qaida and designed a prototype shoe bomb for destroying airplanes and a magnetic mine for attacking ships.
- An individual who trained al Qaida associates in the use of explosives and worked on a plot to use cell phones to detonate bombs.
- An individual who served as an al Qaida translator and managed operating funds for al Qaida. An individual who helped stockpile weapons for use against U.S. forces in Afghanistan.

QUESTIONING OF DETAINEES

Questioning of Guantanamo detainees has improved the security of our nation and coalition partners by expanding our understanding of al Qaida, its affiliates, and other extremely dangerous terrorist groups that threaten our security. The combined effect of this information is critical in the ongoing efforts to disrupt the attack plans of al Qaida and its affiliates throughout the world:

- Detainees have revealed al Qaida leadership structures, operatives, funding mechanisms, communication methods, training and selection programs, travel patterns, support infrastructures, and plans for attacking the U.S. and other countries.
- Information has been used by forces on the battlefield to identify significant military and tribal leaders engaged in or supporting attacks on U.S. and coalition forces.
- Detainees continuously provide information that confirms other reporting regarding the roles and intentions of al Qaida and other terrorist operatives.

Specifically, Guantanamo detainees have provided the U.S. with:

- Information on individuals connected to al Qaida's efforts to acquire weapons of mass destruction.
- Information on front companies and accounts supporting al Qaida, Taliban, and Hezb-I Islam/Gulbuddin (HIG) operations.
- Information on surface-to-air missiles, improvised explosive devices (IEDs), and tactics and training used by al Qaida, Taliban, and HIG elements.
- Identification of HIG associates in Afghanistan.
- Significant, "actionable" information on al Qaida explosives training, assembly, and distribution throughout Afghanistan.
- Information on the training of young adults (age 16-18) for suicide bombing missions.
- Detailed information on travel routes potentially used by terrorists to reach the U.S. via Latin America.
- Detailed information on transnational funding operations in support of al Qaida, Taliban, and HIG, as well as information on individuals suspected of money laundering for terrorist organizations.
- Information on non-governmental organizations (NGOs) providing financial and material support to terrorist organizations.

ACTIONABLE RESULTS

By "connecting the dots," information obtained from detainees at Guantanamo is helping in the war on terrorism. U.S. and coalition forces have:

- Used this information in planning and executing counter-terrorism missions.
- Developed countermeasures to disrupt suspected terrorist travel routes into the U.S.
- Focused collection on associates of Usama bin Laden and al Qaida network operatives.

- Initiated projects to focus intelligence and law enforcement resources on the financing of terrorism.
- Expanded understanding of jihadist motivation, selection, and training processes.

### THE REASON FOR DETAINING ENEMY COMBATANTS

Detention of enemy combatants in wartime is not an act of punishment. It is a matter of security and military necessity. It prevents enemy combatants from continuing to fight against the U.S. and its partners in the war on terror. Releasing enemy combatants before the end of the hostilities and allowing them to rejoin the fight would only prolong the conflict and endanger coalition forces and innocent civilians.

There is no requirement in the law of armed conflict that a detaining power charge enemy combatants with crimes, or give them lawyers or access to the courts in order to challenge their detention. States in prior wars have generally not done so.

The Third Geneva Convention of 1949 accords POW status only to enemy forces who follow certain rules: wear uniforms; do not deliberately target civilians; and otherwise fight in accordance with the laws and customs of war.

- Al Qaida and the Taliban militia did not follow these rules because, as groups, they systematically and deliberately have attacked innocent civilians and they do not wear clothing that distinguish them from civilians. Accordingly, the U.S. is under no obligation to grant al Qaida and Taliban forces POW status and did not do so. Rather, they are unlawful combatants who enjoy fewer protections as detainees under the law of war.

### HUMANE TREATMENT OF DETAINEES

The Department of Defense is treating detainees at Guantanamo humanely and providing them many privileges similar to those POWs would receive, including:

- Three meals per day that meet cultural dietary requirements.
- Adequate shelter and clothing.
- Opportunity to worship, including copies of the Koran and prayer beads.
- The means to send and receive mail.
- Reading materials
- Excellent medical care.

Even if detainees were POWs, they would not have the right to lawyers, access to the courts to challenge their detention, or the right to release prior to the end of hostilities. Nothing in the Geneva Convention provides POWs such rights and POWs in past wars have not generally been given these rights.

THOROUGH PROCESS FOR DETERMINING ENEMY COMBATANT STATUS

**Initial Enemy Combatant Determination.** At the time of capture and based on available information, combatant and field commanders determine whether a captured individual was part of or supporting forces hostile to the United States or coalition partners, and engaged in an armed conflict against the United States. Such persons are enemy combatants.

The U.S. follows an extensive, multi-step process for determining who is detained as an enemy combatant and which enemy combatants should be transferred to Guantanamo.

**Assessments in the Field.** First, in a hostile environment, soldiers detain those who are posing a threat to U.S. and coalition forces based on available information or direct combat. After a period of initial detention, they are sent to a centralized holding area.

**Centralized Assessments in Area of Operations.** A military screening team at the central holding area reviews all available information, including interviews with detainees. With assistance from other U.S. government officials on the ground (including military lawyers, intelligence officers, and Federal law enforcement officials) and considering all relevant information (including the facts from capture and detention, threat posed by the individual, intelligence value, and law enforcement interest) the military screening team assesses whether the detainee should continue to be detained and whether transfer to Guantanamo is warranted.

**General Officer Review.** A general officer designated by the combatant commander makes a third assessment of those enemy combatants who are recommended for transfer to Guantanamo. The general officer reviews the central holding area screening teams' recommendations. When determining whether a detainee should be transferred, the combatant commander considers the threat posed by the detainee, his seniority within hostile forces, possible intelligence that may be gained from the detainee through questioning, and any other relevant factors.

**DOD Review.** DOD officials in Washington also review those proposed for transfer to Guantanamo prior to transfer. An internal DOD review panel, including legal advisors, reviews the recommendations of the combatant commander and advises the Secretary of Defense on proposed detainee movements to Guantanamo. All available information is considered, including information submitted by other governments or obtained from the detainees themselves.

- Approximately 10,000 individuals have been screened in Afghanistan and released. Less than 10 percent of those screened have been moved to Guantanamo.

**Further Assessment at Guantanamo.** Immediately upon arrival at Guantanamo, detainees are interviewed and further assessments are made. Reviews are based on all relevant information, including information derived from the field, detainee interviews, U.S. intelligence and law enforcement sources, and foreign governments.

PROCESS FOR ASSESSING DETAINEES FOR RELEASE OR TRANSFER

In addition to the review process described above, there is also a detailed process for gauging the threat posed by each detainee to determine whether, notwithstanding his status as an enemy combatant, he can be released or transferred to the custody of his government, consistent with our national security interests.

- Individual cases are reviewed by an integrated team of interrogators, analysts, behavioral scientists, and regional experts.
- Detainee cases are assessed according to the threat posed to the national security of the U.S. and our allies. Threat assessments are based on all available information from interagency sources, and are provided to Southern Command for review.
- The commander of U.S. Southern Command, or his designee, then makes a recommendation in each individual case based on the threat the detainee poses to the U.S. as well as his intelligence value or law enforcement interest. Continued detention of enemy combatants is appropriate not only when a detainee is identified as posing a significant threat if released, but also when further investigation is required or if there is a substantial law enforcement or intelligence interest.
- The commander of U.S. Southern Command, or his designee, then forwards his recommendations to an interagency committee in Washington that includes law enforcement, intelligence, and defense representatives. The interagency committee reviews each case, as well as the recommendations, to make a more fully integrated assessment.
- The Secretary of Defense, or his designee, is responsible for making decisions about the release or transfer of detainees from Guantanamo. However, no determination is made without full consideration of other agency positions.

Because detainees at Guantanamo may be held for a long time as the war against al Qaida and its affiliates continues, the review process is being formalized for the future to provide each detainee at Guantanamo with an individualized, regular review to assess the continued need for detention.

- A review board will review the case of each detainee annually.
- Each detainee will have the opportunity to appear before the board to present information in his own behalf.
- The board will consider all available information about the detainee, including information provided by the detainee and by his government.
- This process is completely discretionary and in no way impacts the authority of the U.S. to continue to detain enemy combatants under the law of war.
- The details of how the board will function and its composition will be announced later.

### SUMMARY OF REVIEW PROCESS

This review process, although lengthy and complicated, is critical to our national security. A thorough review is required to help avoid mistakes that could result in the death of Americans or other innocent civilians around the world.

- As a result of this process, more than 90 detainees have been released from Guantanamo.
- The fact that al Qaida and the Taliban do not distinguish themselves from the civilian population makes our job much more difficult than it is in traditional conflicts.
- The fact that some enemy combatants are released prior to the cessation of hostilities does not mean they were not properly determined to be enemy combatants under the law of armed conflict.
- Releases are not without risk. Even though the threat assessment process is careful and thorough, the U.S. now believes that several detainees released from Guantanamo have returned to the fight against U.S. and coalition forces.

### TRANSFER PROCESS

The U.S. is also working to transfer detainees, under appropriate conditions, to the custody of other governments that are willing to accept responsibility for ensuring that the detainees will not pose a threat to the international community. Four detainees have been transferred to Saudi Arabia. More transfers are anticipated in the near future.

Various factors must be considered before any such decision to transfer is reached, including the threat posed by the detainee, law enforcement interests, intelligence interests, and appropriate transfer terms, including humane treatment.

Even though transfers are a complex process, they are extremely important. Many countries must work together in fighting global terrorism.

### MILITARY COMMISSIONS

The U.S. plans to prosecute some detainees at Guantanamo for war crimes before military commissions. Military tribunals are the recognized way to try enemy combatants during wartime under the Geneva Convention, and they have been used by many countries in past wars, e.g. by the Allies in WWI and WWII. The military commissions will be fair and open, and will include:

- Presumption of innocence.
- Proof beyond a reasonable doubt.
- Right to counsel.
- Right to present evidence/witnesses in one's behalf.
- Right to cross-examine evidence/witnesses of prosecution.
- Right not to testify, with no adverse inference to be drawn.
- Right to exculpatory evidence known to prosecution.
- Right to appeal.

FINAL

## **Fact Sheet**

FINAL

- Prohibition on double jeopardy.
- Proceedings must be open to maximum extent practicable.

-end-